

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of :)	
)	
Lewis Memorial Baptist Church)	
)	CSR 6283
Video Programming Accessibility)	
)	
Petition for Waiver of Closed Captioning)	
Requirements)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2005

Released: July 21, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission's rules,¹ implementing Section 713 of the Communications Act of 1934, as amended (the "Act"),² filed by Lewis Memorial Baptist Church, ("Lewis") producer of the television program The Daily Walk aired on WCHS-TV, Huntington, West Virginia and PAX-TV. Telecommunications for the Deaf, Inc. ("TDI"), the National Association of the Deaf ("NAD"), The Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), and Self Help for Hard of Hearing People ("SHHH") filed a consolidated opposition to the petition for exemption.³ For the reasons discussed below, Lewis' petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.⁴ In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.⁵ Congress defined "undue burden" to mean "significant difficulty or expense."⁶ When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following

¹ 47 C.F.R. § 79.1.

² 47 U.S.C. § 613.

³ TDI, NAD, DHHCAN, and SHHH argue that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

⁴ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("Report and Order").

⁵ 47 U.S.C. § 613(d)(1).

⁶ 47 U.S.C. § 613(e).

factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷ A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.⁸ Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.⁹

II. DISCUSSION

3. Section 79.1(f) requires a petition for exemption from the closed captioning requirements to demonstrate that compliance would cause significant difficulty or expense.¹⁰ Lewis submitted a copy of its church financial statement which details the monthly income and expenses for the calendar year 2003 through August 2004. The financial statement is an itemized breakdown of church expenses and income.¹¹ During the period covered in the financial statement, Petitioner's "General Fund" averaged monthly receipts of over \$120,000 per month, with a significant disbursement of funds towards various church operations, but an ending balance in the tens of thousands of dollars available monthly.¹² Lewis indicates that its media expenses are invoiced and/or expended on a periodic basis as opposed to monthly, which is reflected by the varying amount of monies expended each month.¹³ It appears therefore, that no specific budget is earmarked to sustain media operations and associated expenses, such as captioning. Lewis indicates that it would cost between \$1,100 and \$1,440 per month to caption its programming.¹⁴ Lewis seeks to show that its limited media expenditures indicate that the cost of captioning would present an undue burden. However, in determining whether the cost of captioning would pose an undue burden, the Commission must evaluate whether the cost of captioning in the context of Lewis' overall budget would be burdensome, not merely as it relates to an amount earmarked as media expenditures. As noted above, the ending balance of the General Fund, from which media costs are allocated, in any of the 20 months for which Lewis provided data would easily cover the costs of captioning The Daily Walk. Moreover, because Lewis is involved in various activities, it appears that funds could be redistributed and made available to its media operations in order to provide for the cost of captioning. Accordingly, the information submitted does not convincingly show that captioning is not financially possible or would prove to be a financial burden.

4. Lewis also indicates that it sought captioning assistance from WCHS-TV and PAX-TV, the two channels which currently air The Daily Walk.¹⁵ Lewis states that PAX-TV declined to offer assistance in defraying captioning costs, stating that captioning is the responsibility of the advertiser or programming provider, not the channel and it would not pay monies to program producers for closed captioning purposes.¹⁶ Petitioner also asserts that WCHS-TV's station manager stated that he knew of no

⁷ *Id.*; see also 47 C.F.R. § 79.1(f).

⁸ 47 C.F.R. § 79.1(f)(2).

⁹ 47 C.F.R. § 79.1(f)(3).

¹⁰ 47 C.F.R. § 79.1(f)(2).

¹¹ Petition at 7. See Exhibit E.

¹² See Exhibit E. The ending monthly General Fund balances ranged from a high of \$82,219.69 (May 2004) to a low of \$25,365.41 (July 2003).

¹³ Petition at 7-8. Lewis expended an average of 1,728.56 per month on "media" expenses over the 20 month period detailed in the financial statement.

¹⁴ Petition at 5 and Exhibit B.

¹⁵ Petition at 5.

¹⁶ *Id.* See Exhibit D.

policy requiring a channel to contribute financially to captioning the programming it broadcasts.¹⁷ In the *Report and Order*, the Commission concluded video programming distributors are responsible for compliance with the closed captioning rules.¹⁸ The Commission stated that placing the compliance obligations on distributors will allow the Commission to monitor and enforce the rules more efficiently, and would identify a single entity to which complaints could be addressed.¹⁹ Although we placed the ultimate responsibility on program distributors, we further stated that distributors would likely incorporate closed captioning requirements into their contracts with producers and owners to negotiate for an efficient allocation of captioning responsibilities.²⁰ Lewis should inform its distributors of their ultimate responsibility under the closed captioning rules. Given the resources available to Lewis, however, the refusal of WCHS-TV and PAX-TV to provide captioning assistance fails to establish that an exemption is warranted.

III. ORDERING CLAUSE

5. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED**. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ Petition at 5-6.

¹⁸ See *Report and Order*, 13 FCC Rcd at 3286; see also 79.1(a)(2). Video programming distributors are entities who provide video programming directly to a customer's home, regardless of the distribution technology employed. Distributors include broadcasters, cable operators, wireless cable operators, SMATV operators, DBS providers, DTH providers, HSD providers and OVS operators.

¹⁹ *Report and Order*, 13 FCC Rcd at 3286.

²⁰ *Id.*

²¹ 47 C.F.R. § 0.283.